

AMENDED IN SENATE MAY 8, 1997
AMENDED IN SENATE APRIL 28, 1997

SENATE BILL

No. 641

Introduced by Senator Polanco

February 25, 1997

An act to amend Section 1270.1 of the Penal Code, relating to bail, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 641, as amended, Polanco. Pretrial release: failure to appear.

Existing law requires that a hearing be held before any person who is arrested for a violent felony or certain other offenses involving spousal rape, domestic violence, or harassing and threatening another person is released on bail in an amount that is more or less than the amount contained in the schedule of bail for the offense, or on his or her own recognizance.

This bill would add persons who are arrested for serious felonies or who within the previous 5 years have failed to appear when released on bail or on their own recognizance following arrest and charging of a felony offense, to whom that provision applies. The bill would establish ~~a rebuttable presumption that those persons are ineligible to be released on their own recognizance~~ *the burden on the prosecution to present evidence regarding release of the person detained, as specified*, and would require the court to appoint defense

counsel for the hearing. By imposing increased duties on local criminal justice systems that are equivalent to those imposed by the establishment of a new crime, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1270.1 of the Penal Code is
2 amended to read:

3 1270.1. (a) Before any person who is arrested for any
4 of the following crimes may be released on bail in an
5 amount that is either more or less than the amount
6 contained in the schedule of bail for the offense, or may
7 be released on his or her own recognizance, a hearing
8 shall be held in open court before the magistrate or judge:

9 (1) A serious felony, as defined in subdivision (c) of
10 Section 1192.7, or a violent felony, as defined in
11 subdivision (c) of Section 667.5.

12 (2) A violation of Section 262, 273.5, or 646.9.

13 (3) A violation of paragraph (1) of subdivision (e) of
14 Section 243.

15 (4) Any felony, if within the previous five years, he or
16 she has failed to appear in court after being released on
17 bail or on his or her own recognizance following arrest
18 and charging of a felony offense.

19 ~~(b) At the hearing, it shall be a rebuttable~~
20 ~~presumption that a person described in this section is~~
21 ~~ineligible for release on his or her own recognizance. The~~
22 ~~prosecuting attorney and defense attorney shall be given~~
23 ~~a two court day written notice and an opportunity to be~~

~~1 heard on the matter. If the defendant does not have
2 counsel, the court shall appoint counsel for purposes of
3 this section only. The hearing required by this section
4 shall be held within the time period prescribed in Section
5 825.~~

~~6 If the judge or magistrate sets the bail in an amount that
7 is either more or less than the amount contained in the
8 schedule of bail for the offense, or if the judge or
9 magistrate releases the defendant on his or her own
10 recognizance based on a finding that the presumption
11 against the release has been rebutted by defense counsel,
12 the judge or magistrate shall state the reasons for that
13 decision and shall address the issue of threats made
14 against the victim or witness, if they were made, and what
15 factual evidence rebutted the presumption against
16 release, in the record. This statement shall be included in
17 the record.~~

*18 (b) The prosecuting attorney and defense attorney
19 shall be given a two court-day written notice and an
20 opportunity to be heard on the matter. If the detained
21 person does not have counsel, the court shall appoint
22 counsel for purposes of this section only. The hearing
23 required by this section shall be held within the time
24 period prescribed in Section 825.*

*25 (c) At the hearing, it shall be the prosecuting
26 attorney's burden to present evidence of past court
27 appearances of the detained person, to indicate the
28 potential sentence that could be imposed, and to present
29 evidence regarding the danger that may be posed to
30 other persons if the detained person is released. In
31 making the determination whether to release the
32 detained person on his or her own recognizance, the
33 court shall consider the potential danger to other persons,
34 including threats that have been made by the detained
35 person and any past acts of violence. The court shall also
36 consider any evidence offered by the detained person
37 regarding his or her ties to the community and his or her
38 ability to post bond.*

*39 (d) If the judge or magistrate sets the bail in an amount
40 that is either more or less than the amount contained in*

1 *the schedule of bail for the offense, the judge or*
2 *magistrate shall state the reasons for that decision and*
3 *shall address the issue of threats made against the victim*
4 *or witness, if they were made, in the record. This*
5 *statement shall be included in the record.*

6 SEC. 2. No reimbursement is required by this act
7 pursuant to Section 6 of Article XIII B of the California
8 Constitution because the only costs that may be incurred
9 by a local agency or school district will be incurred
10 because this act creates a new crime or infraction,
11 eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section
13 17556 of the Government Code, or changes the definition
14 of a crime within the meaning of Section 6 of Article
15 XIII B of the California Constitution.

16 Notwithstanding Section 17580 of the Government
17 Code, unless otherwise specified, the provisions of this act
18 shall become operative on the same date that the act
19 takes effect pursuant to the California Constitution.

20 SEC. 3. This act is an urgency statute necessary for the
21 immediate preservation of the public peace, health, or
22 safety within the meaning of Article IV of the
23 Constitution and shall go into immediate effect. The facts
24 constituting the necessity are:

25 In order to reduce the number of defendants who fail
26 to appear for hearings or trial, it is necessary that this act
27 take effect immediately.

